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**Attorneys for Defendant, Medford Township Zoning Board of Adjustment**

DEPETRIS FAMILY ASSOCIATES 2, LLC,  Plaintiff,  v.  MEDFORD TOWNSHIP ZONING BOARD OF ADJUSTMENT Defendants.	SUPERIOR COURT OF NEW JERSEY BURLINGTON COUNTY LAW DIVISION - CIVIL PART  Docket No. DC-002149-19  CIVIL ACTION  <b>ANSWER AND SEPARATE DEFENSES OF DEFENDANT MEDFORD TOWNSHIP ZONING BOARD OF ADJUSTMENT</b>
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Defendant Medford Township Zoning Board of Adjustment ("Defendant"), by way of Answer to the Complaint of Plaintiff Depetris Family Associates 2, LLC ("Plaintiff") says:

1. The Defendant does not have sufficient information and belief to admit the allegations in Paragraph 1 and leaves Plaintiff to its proofs.
2. Admitted.
3. Admitted.
4. The Defendant avers that the zoning standards of the Community Commercial (CC) Zoning District in Medford Township speak for themselves.
5. Admitted.
6. Admitted.
7. Admitted.

8. Admitted, except that Defendant denies that the strip shopping mall at Tuckerton and Taunton Road is outdated.

9. Defendant admits that Plaintiff filed a use variance application to demolish the existing PNC Bank and to construct a retail shopping center with four (4) tenants, and denies the remainder of the allegations of Paragraph 9 of the Complaint.

10. Admitted.

11. Admitted.

12. The Defendant avers that Resolution #2017-24 speaks for itself.

13. The Defendant does not have sufficient information and belief to admit the allegations in Paragraph 13 and leaves Plaintiff to its proofs.

14. Admitted.

15. Admitted.

16. Admitted.

17. Admitted.

18. Defendant denies any implication in Paragraph 18 that the Zoning Board's planning professionals supported an application for use variance approval of a Dunkin Donuts and three other retail uses with a shopping center.

19. Admitted.

20. Admitted.

21. Defendant avers that James DePetris' testimony at zoning board public hearings speaks for itself.

22. Admitted.

23. Admitted.

24. Admitted.

25. Defendant admits that Plaintiff proposed a full movement access at Taunton Road, but the remainder of the allegations in Paragraph 25 of the Complaint.

26. Admitted.

27. Defendant avers that Greg Elco's expert engineering testimony at the public hearing speaks for itself, and denies the remainder of the allegations in Paragraph 27 of the Complaint.

28. Admitted.

29. Defendant avers that David Witt's expert architectural testimony at the public hearing speaks for itself, and denies the remainder of the allegations in Paragraph 29 of the Complaint.

30. Defendant avers that David Witt's expert architectural testimony at the public hearing speaks for itself, and denies the remainder of the allegations in Paragraph 29 of the Complaint.

31. Admitted.

32. Admitted.

33. Defendant avers that Nathan Moseley's expert traffic engineering testimony at the public hearing speaks for itself, and denies the remainder of the allegations in Paragraph 33 of the Complaint.

34. Admitted.

35. Defendant avers that Nathan Moseley's expert traffic engineering testimony at the public hearing speaks for itself, and denies the remainder of the allegations in Paragraph 35 of the Complaint.

36. Defendant avers that Nathan Moseley's expert traffic engineering testimony at the public hearing speaks for itself, and denies the remainder of the allegations in Paragraph 36 of the Complaint.

37. Admitted.

38. Defendant avers that Nathan Moseley's expert traffic engineering testimony at the public hearing speaks for itself, and denies the remainder of the allegations in Paragraph 38 of the Complaint.

39. Defendant avers that Nathan Moseley's expert traffic engineering testimony at the public hearing speaks for itself, and denies the remainder of the allegations in Paragraph 39 of the Complaint.

40. Admitted.

41. Admitted.

42. Admitted.

43. Defendant avers that Greg Elco's expert engineering testimony at the public hearing speaks for itself, and denies the remainder of the allegations in Paragraph 43 of the Complaint.

44. Admitted.

45. Defendant is without sufficient information to admit or deny the allegations in Paragraph 45 of the Complaint and leave Plaintiff to its proofs.

46. Defendant avers that Greg Elco's expert engineering testimony at the public hearing speaks for itself, and denies the remainder of the allegations in Paragraph 46 of the Complaint.

47. Admitted.

48. Admitted.

49. Admitted.

50. Admitted.

51. Admitted.

52. Admitted.

53. Defendant avers that James Miller's expert planning testimony at the public hearing speaks for itself, and denies the remainder of the allegations in Paragraph 53 of the Complaint.

54. Defendant avers that James Miller's expert planning testimony at the public hearing speaks for itself, and denies the remainder of the allegations in Paragraph 54 of the Complaint.

55. Defendant avers that James Miller's expert planning testimony at the public hearing speaks for itself, and denies the remainder of the allegations in Paragraph 55 of the Complaint.

56. Defendant avers that James Miller's expert planning testimony at the public hearing speaks for itself, and denies the remainder of the allegations in Paragraph 56 of the Complaint.

57. Defendant avers that James Miller's expert planning testimony at the public hearing speaks for itself, and denies the remainder of the allegations in Paragraph 57 of the Complaint.

58. Defendant avers that James Miller's expert planning testimony at the public hearing speaks for itself, and denies the remainder of the allegations in Paragraph 58 of the Complaint.

59. Admitted.

60. Admitted.

61. Admitted.

62. Admitted.

63. Admitted.

64. Admitted.

65. Admitted.

66. Admitted.

67. Defendant admits the subject property is not suitable for a Dunkin Donuts with drive through and three additional retail stores, and denies the remainder of the allegations in Paragraph 67 of the Complaint.

#### COUNT ONE

68. Defendant repeats its responses to Paragraphs 1 through 67 as if set forth herein at length.

69. Admitted.

70. Admitted.

71. Admitted.

72. Admitted.

73. Admitted.

74. Denied for the reasons set forth in the Zoning Board's Resolution of Denial.

75. Denied for the reasons set forth in the Zoning Board's Resolution of Denial.

76. Admitted.

77. Denied.

78. Denied for the reasons set forth in the Zoning Board's Resolution of Denial.

79. Defendant denies that it previously represented in Resolution 2017-24 that a Dunkin Donuts with drive-through and three additional retail stores would be particularly suitable at the PNC Bank building property.

80. Defendant denies that all coffee shops with drive-through's are particularly suitable at all locations within the Medford Township CC Zoning District, particularly as relates to AM peak traffic patterns.

81. Denied for the reasons set forth in the Zoning Board's Resolution of Denial.

82. Denied for the reasons set forth in the Zoning Board's Resolution of Denial.

83. Defendant avers that the New Jersey Supreme Court decision in *Riya Finnegan* speaks for itself.

84. Admitted.

85. Defendant avers that the New Jersey Appellate Division decision in *New York SMSA* involves a cell tower, which specifically requires expert testimony in all phases of review, whereas on non-cell tower applications, knowledge of local conditions is a relevant consideration, which board members may consider in their lay opinions.

86. Denied for the reasons set forth in the Zoning Board's Resolution of Denial.

87. Denied for the reasons set forth in the Zoning Board's Resolution of Denial.

88. Denied for the reasons set forth in the Zoning Board's Resolution of Denial.

89. Denied.

90. Denied.

**WHEREFORE**, Defendant Medford Township Zoning Board of Adjustment demands dismissal of the Complaint for failure set forth a cause of action and since the Board's denial of use variance approval is supported by the record below.

Count Two

91. Defendant repeats it responses to Paragraphs 1 through 90 as if set forth herein at length.

92. Denied.

93. Denied.

**WHEREFORE**, Defendant Medford Township Zoning Board of Adjustment demands dismissal of the Complaint for failure set forth a cause of action and since the Board's denial of use variance approval is supported by the record below.

Count Three

94. Defendant repeats it responses to Paragraphs 1 through 93 as if set forth herein at length.

95. Admitted.

96. Denied.

97. Denied.

**WHEREFORE**, Defendant Medford Township Zoning Board of Adjustment demands dismissal of the Complaint for failure set forth a cause of action and since the Board's denial of use variance approval is supported by the record below.

**SEPARATE DEFENSES**

1. The Zoning Board's Denial of Use Variance Approval is supported by the record below.



2. The subject property is a substantially undersized 0.898 acre lot and is not particularly suitable for a Dunkin Donuts and three other retail uses.
3. The Zoning Board never intimated to Plaintiff that the subject property was particularly suitable for a Dunkin Donuts with drive through, plus three additional retail stores.
4. Plaintiff has no undue hardship to warrant the granting the use variance relief, in circumstances where Plaintiffs seeks approval for a Dunkin Donuts with drive-through and three additional retail stores on a substantially undersized lot.
5. Plaintiff is not entitled to zoning variance relief in order to maximize its profits.
6. The Zoning Board properly denied the use variance because Applicant proposed a full movement access on Taunton Road, which created unsafe ingress/egress and inefficient traffic circulation for motor vehicles attempting a left-turn movement from Dunkin Donuts onto Taunton Road.
7. The Zoning Board properly denied the application and requested variance relief because Plaintiff proposes overdevelopment of the subject property.
8. The Zoning Board property denied use variance relief because the Zone Plan and Master Plan contemplate a significant buffer for retail use with drive-through at a corner location and non-excessive lot coverage.
9. Plaintiff did not satisfy the “negative criteria” because the subject property is proposed for overdevelopment, too close in proximity to any existing and congested traffic intersection.
10. The other two coffee shops with a drive-through approved in other CC Zoning Districts were proposed at locations where the AM Peak hour traffic could be accommodated.
11. Plaintiff’s Complaint must be dismissed because Plaintiff has unclean hands.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to **R.** 4:25-4, Christopher J. Norman, Esquire is hereby designated trial counsel in this matter.

**CERTIFICATION PURSUANT TO RULE 4:5-1**

The matter in controversy is not the subject of any other known action pending in any Court, or of known, pending, or contemplated arbitration proceeding. There are no other parties known who should be joined in this action.

BY: \_\_\_\_\_

Christopher J. Norman, Esquire  
Attorney for Defendants  
Medford Township Zoning Board of Adjustment

DATED: 10/28/19